

AMENDED IN ASSEMBLY MARCH 17, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1200

Introduced by Assembly Member Ma

February 18, 2011

~~An act to amend Section 345 of the Water Code, relating to the Department of Water Resources. An act to amend Sections 13193 and 13271 of the Water Code, relating to water quality.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1200, as amended, Ma. ~~Department of Water Resources: state-constructed water projects: recreation development. Water quality: discharges: sewer systems.~~

(1) The Porter-Cologne Water Quality Control Act generally requires a person who causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, as soon as that person has knowledge of the discharge and other requirements are met, to immediately notify the California Emergency Management Agency of the discharge in accordance with specified spill reporting requirements. The act requires the California Emergency Management Agency to immediately notify the appropriate California regional water quality control board and the local health officer and director of environmental health of the discharge. Upon receiving notification of a discharge, the local health officer and the director of environmental health are required to immediately notify the public of the discharge by posting notices or other appropriate means, if necessary, to safeguard public health and safety. A person who fails to notify in accordance with these requirements, with a certain exception, is guilty of a misdemeanor that

is punishable by a fine of not more than \$20,000, imprisonment for not more than one year, or both.

Under the act, the notification requirements do not apply to a discharge that is in compliance with waste discharge requirements or other specified provisions of law.

This bill would remove that exception to the notification requirements, thereby expanding the scope of a crime. By expanding the scope of a crime, and to the extent that the bill would increase the level of services imposed on local health officers, this bill would impose a state-mandated local program.

(2) The act requires the public or private entity having legal authority over the operation and maintenance of, or capital improvement to, a sewer collection system to submit a report to the appropriate regional board relating to a spill or overflow from a sanitary sewer system.

This bill would specify that a combined sewer and stormwater system is subject to this requirement.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law requires the Department of Water Resources to plan recreation development associated with state-constructed water projects and to acquire land necessary to implement and execute plans for that development pursuant to legislative authorization. Existing law authorizes the department, in carrying out those duties, to enter into contracts, leases, and agreements with state agencies, the federal government, local public agencies, and other persons.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 13193 of the Water Code is amended to*
2 *read:*

3 13193. (a) As used in this section, the following terms have
4 the following meanings:

5 (1) “Collection system owner or operator” means the public or
6 private entity having legal authority over the operation and
7 maintenance of, or capital improvements to, the sewer collection
8 system, *including a combined sewer and stormwater system.*

9 (2) “GIS” means Geographic Information System.

10 (b) On or before January 1 of a year in which the Legislature
11 has appropriated sufficient funds for this purpose, the state board,
12 in consultation with representatives of cities, counties, cities and
13 counties, special districts, public interest groups, the State
14 Department of Public Health, and the regional boards shall develop
15 a uniform overflow event report form to be used for reporting of
16 sanitary sewer system, *including a combined sewer and stormwater*
17 *system*, overflows as required in subdivision (c). This event report
18 form shall include, but not be limited to, all of the following:

19 (1) The cause of the overflow. The cause shall be specifically
20 identified, unless there is an ongoing investigation, in which case
21 it shall be identified immediately after completion of the
22 investigation. The cause shall be identified, at a minimum, as
23 blockage, infrastructure failure, pump station failure, significant
24 wet weather event, natural disaster, or other cause, which shall be
25 specifically identified. If the cause is identified as a blockage, the
26 type of blockage shall be identified, at a minimum, as roots, grease,
27 debris, vandalism, or multiple causes of which each should be
28 identified. If the cause is identified as infrastructure, it shall be
29 determined, at a minimum, whether the infrastructure failure was
30 due to leaks, damage to, or breakage of, collection system piping
31 or insufficient capacity. If the cause is identified as a significant
32 wet weather event or natural disaster, the report shall describe both
33 the event and how it resulted in the overflow. If the precise cause
34 cannot be identified after investigation, the report shall include a
35 narrative explanation describing the investigation conducted and
36 providing the information known about the possible causes of the
37 overflow.

38 (2) An estimate of the volume of the overflow event.

1 (3) Location of the overflow event. Sufficient information shall
2 be provided to determine location for purposes of GIS mapping,
3 such as specific street address or the latitude and longitude of the
4 event.

5 (4) Date, time, and duration of the overflow event.

6 (5) Whether or not the overflow reached or may have reached
7 waters of the state.

8 (6) Whether or not a beach closure occurred or may have
9 occurred as a result of the overflow.

10 (7) The response and corrective action taken.

11 (8) Whether or not there is an ongoing investigation, the reasons
12 for it, and expected date of completion.

13 (9) The name, address, and telephone number of the reporting
14 collection system owner or operator and a specific contact name.

15 (c) Commencing on July 1 of a year in which the Legislature
16 has appropriated sufficient funds for this purpose, in the event of
17 a spill or overflow from a sanitary sewer system, *including a*
18 *combined sewer and stormwater system*, that is subject to the
19 notification requirements set forth in Section 13271, the applicable
20 collection system owner or operator, in addition to immediate
21 reporting duties pursuant to Section 13271, shall submit to the
22 appropriate regional board, within 30 days of the date of becoming
23 aware of the overflow event, a report using the form described in
24 subdivision (b). The report shall be filed electronically, if possible,
25 or by fax or mail if electronic submission is not possible.

26 (d) (1) Commencing on July 1 of a year in which the Legislature
27 has appropriated sufficient funds for this purpose, in the event of
28 a spill or overflow from a sanitary sewer system, *including a*
29 *combined sewer and stormwater system*, that is not subject to the
30 reporting requirements set forth in Section 13271 that is either
31 found by the State Department of Public Health or any local health
32 officer to result in contamination pursuant to Section 5412 of the
33 Health and Safety Code, or is found by the State Department of
34 Public Health to result in pollution or nuisance pursuant to Section
35 5413 of the Health and Safety Code, the agency making the
36 determination shall submit to the appropriate regional board, within
37 30 days of making the determination, a report that shall include,
38 at a minimum, the following information:

39 (A) Date, time, and approximate duration of the overflow event.

40 (B) An estimate of the volume of the overflow event.

1 (C) Location of the overflow event.

2 (D) A description of the response or corrective action taken by
3 the agency making the determination.

4 (E) The name, address, and telephone number of the reporting
5 collection system owner or operator, and a specific contact name.

6 (2) The report shall be filed electronically, if possible, or by fax
7 or mail if electronic submission is not possible.

8 (e) Before January 1 of a year in which the Legislature has
9 appropriated sufficient funds for this purpose, the state board, in
10 consultation with representatives of cities, counties, cities and
11 counties, and special districts, public interest groups, the State
12 Department of Public Health, and regional boards, shall develop
13 and maintain a sanitary sewer system overflow database that, at a
14 minimum, contains the parameters described in subdivisions (b)
15 and (d).

16 (f) Commencing on July 1 of a year in which the Legislature
17 has appropriated sufficient funds for this purpose, each regional
18 board shall coordinate with collection system owners or operators,
19 the State Department of Public Health, and local health officers
20 to compile the reports submitted pursuant to subdivisions (c) and
21 (d). Each regional board shall report that information to the state
22 board on a quarterly basis, to be included in the sanitary sewer
23 system overflow database.

24 (g) The state board shall make available to the public, by
25 Internet and other cost-effective means, as determined by the state
26 board, information that is generated pursuant to this section. In a
27 year in which the Legislature has appropriated sufficient funds for
28 the purposes described in this subdivision, the state board shall
29 prepare a summary report of the information collected in the
30 sanitary sewer system overflow database, and make it available to
31 the general public through the Internet and other cost-effective
32 means, as determined by the state board. To the extent resources
33 and the data allow, this report shall include GIS maps compiling
34 coastal overflow events.

35 *SEC. 2. Section 13271 of the Water Code is amended to read:*

36 13271. (a) (1) ~~Except as provided by subdivision (b), any~~ Any
37 person who, without regard to intent or negligence, causes or
38 permits any hazardous substance or sewage to be discharged in or
39 on any waters of the state, or discharged or deposited where it is,
40 or probably will be, discharged in or on any waters of the state,

1 shall, as soon as (A) that person has knowledge of the discharge,
2 (B) notification is possible, and (C) notification can be provided
3 without substantially impeding cleanup or other emergency
4 measures, immediately notify the California Emergency
5 Management Agency of the discharge in accordance with the spill
6 reporting provision of the state toxic disaster contingency plan
7 adopted pursuant to Article 3.7 (commencing with Section 8574.16)
8 of Chapter 7 of Division 1 of Title 2 of the Government Code.

9 (2) The California Emergency Management Agency shall
10 immediately notify the appropriate regional board, the local health
11 officer, and the director of environmental health of the discharge.
12 The regional board shall notify the state board as appropriate.

13 (3) Upon receiving notification of a discharge pursuant to this
14 section, the local health officer and the director of environmental
15 health shall immediately determine whether notification of the
16 public is required to safeguard public health and safety. If so, the
17 local health officer and the director of environmental health shall
18 immediately notify the public of the discharge by posting notices
19 or other appropriate means. The notification shall describe
20 measures to be taken by the public to protect the public health.

21 ~~(b) The notification required by this section shall not apply to~~
22 ~~a discharge in compliance with waste discharge requirements or~~
23 ~~other provisions of this division.~~

24 ~~(e)~~

25 (b) Any person who fails to provide the notice required by this
26 section is guilty of a misdemeanor and shall be punished by a fine
27 of not more than twenty thousand dollars (\$20,000) or
28 imprisonment in a county jail for not more than one year, or both.
29 Except where a discharge to the waters of this state would have
30 occurred but for cleanup or emergency response by a public agency,
31 this subdivision shall not apply to any discharge to land ~~which that~~
32 does not result in a discharge to the waters of this state.

33 ~~(d)~~

34 (c) Notification received pursuant to this section or information
35 obtained by use of that notification shall not be used against any
36 person providing the notification in any criminal case, except in
37 a prosecution for perjury or giving a false statement.

38 ~~(e)~~

39 (d) For substances listed as hazardous wastes or hazardous
40 material pursuant to Section 25140 of the Health and Safety Code,

1 the state board, in consultation with the Department of Toxic
2 Substances Control, shall by regulation establish reportable
3 quantities for purposes of this section. The regulations shall be
4 based on what quantities should be reported because they may
5 pose a risk to public health or the environment if discharged to
6 groundwater or surface water. Regulations need not set reportable
7 quantities on all listed substances at the same time. Regulations
8 establishing reportable quantities shall not supersede—waste
9 discharge requirements—~~or~~ water quality objectives adopted
10 pursuant to this division, and shall not supersede or affect in any
11 way the list, criteria, and guidelines for the identification of
12 hazardous wastes and extremely hazardous wastes adopted by the
13 Department of Toxic Substances Control pursuant to Chapter 6.5
14 (commencing with Section 25100) of Division 20 of the Health
15 and Safety Code. The regulations of the Environmental Protection
16 Agency for reportable quantities of hazardous substances for
17 purposes of the *federal* Comprehensive Environmental Response,
18 Compensation, and Liability Act of 1980, as amended (42 U.S.C.
19 Sec. 9601 et seq.) shall be in effect for purposes of the enforcement
20 of this section until the time that the regulations required by this
21 subdivision are adopted.

22 (f)

23 (e) (1) The state board shall adopt regulations establishing
24 reportable quantities of sewage for purposes of this section. The
25 regulations shall be based on the quantities that should be reported
26 because they may pose a risk to public health or the environment
27 if discharged to groundwater or surface water. Regulations
28 establishing reportable quantities shall not supersede—waste
29 discharge requirements—~~or~~ water quality objectives adopted
30 pursuant to this division. For purposes of this section, “sewage”
31 means the effluent of a municipal wastewater treatment plant or a
32 private utility wastewater treatment plant, as those terms are
33 defined in Section 13625, except that sewage does not include
34 recycled water, as defined in subdivisions (c) and (d) of Section
35 13529.2.

36 (2) A collection system owner or operator, as defined in
37 paragraph (1) of subdivision (a) of Section 13193, in addition to
38 the reporting requirements set forth in this section, shall submit a
39 report pursuant to subdivision (c) of Section 13193.

40 (g)

(f) Except as otherwise provided in this section and Section 8589.7 of the Government Code, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency. When notifying the California Emergency Management Agency, the person shall include all of the notification information required in the permit.

~~(h)~~

(g) For the purposes of this section, the reportable quantity for perchlorate shall be 10 pounds or more by discharge to the receiving waters, unless a more restrictive reporting standard for a particular body of water is adopted pursuant to subdivision ~~(e)~~ (d).

~~(i)~~

(h) Notification under this section does not nullify a person's responsibility to notify the local health officer or the director of environmental health pursuant to Section 5411.5 of the Health and Safety Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

~~SECTION 1. Section 345 of the Water Code is amended to read:~~

~~345. (a) The department shall plan recreation development associated with state-constructed water projects in consultation with local public agencies and affected state and federal agencies, and shall acquire land necessary to implement and execute plans for that development pursuant to specific legislative authorization.~~

1 The legislative authorization shall specify to what extent, if any,
2 the power of eminent domain may be used.

3 (b) ~~It is the intent of the Legislature, in enacting this section,~~
4 ~~that no water resources development funds will be appropriated~~
5 ~~for the purpose of acquiring land for recreation development~~
6 ~~associated with state-constructed water projects, exclusive of land~~
7 ~~required for storage and conservation of water for those projects.~~

8 (c) ~~In carrying out its duties under this section, the department~~
9 ~~may enter into contracts, leases, and agreements with other state~~
10 ~~agencies, the federal government, local public agencies, and~~
11 ~~persons. The Department of Fish and Game, the Department of~~
12 ~~Parks and Recreation, and all other affected state and local agencies~~
13 ~~shall cooperate with the Department of Water Resources for~~
14 ~~purposes of this subdivision.~~